

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
CHARLES BRETT, BUILDING)	C.A. No. 05-11542 RGS
INSPECTOR OF TOWN OF HAMILTON,)	
Plaintiff,)	
)	
v.)	
)	
IRINA V. TEMKINA,)	
)	
Defendant.)	
_____)	

MOTION TO DISMISS DEFENDANT'S COUNTERCLAIM

This is an action originally brought in Essex County Superior Court by the Town of Hamilton Building Inspector to enforce the state building code and the town's zoning by-law, both of which the defendant Irina V. Temkina is alleged to have violated in the rental of a single family property located at 521 Bridge St., Hamilton, MA. Defendant, acting *pro se*, removed the case to this court and filed a motion to dismiss the complaint. That motion was denied on September 7, 2005.

Defendant then filed, late, her answer and counterclaim. Her counterclaim asserts eight causes of action: tortious interference with advantageous business relations, violation of the Fifth Amendment to the United States Constitution, violation of United States Constitution Article I Section 10, violation of 42 U.S.C. § 1983, malicious prosecution, abuse of process, intentional infliction of emotional distress and negligence. The defendants-in-counterclaim Building Inspector and Town of Hamilton move to dismiss each of these causes of action on the grounds that they fail to state a claim for relief pursuant to Fed. R. Civ. P. 12(b)(6). Some of the counts are defective because

these defendants-in-counterclaim are immune from liability. Other counts lack all of the elements necessary for relief to be granted. Finally, to the extent that there is any possibility that one or more of the state law counterclaims may remotely state a cause of action (if their allegations could be proven), the court should decline to exercise its supplemental jurisdiction as they are not reasonably related to the Building Inspector's original claims.

In further support of this motion, the defendants-in-counterclaim rely upon the memorandum of law submitted herewith.

Dated: November 3, 2005

Respectfully submitted,

PLAINTIFF TOWN OF HAMILTON
BUILDING INSPECTOR,
By his Attorney,

/s/ Donna Brewer MacKenna
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DEFENDANTS-IN-COUNTERCLAIM
TOWN OF HAMILTON BUILDING
INSPECTOR AND
TOWN OF HAMILTON
By their Attorney,

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LOCAL RULE 7.1 CERTIFICATION

I certify that on October 22, 2005, I spoke by telephone with defendant/plaintiff-in-counterclaim Irina V. Temkina in an attempt to narrow or resolve the issues raised in this motion. That effort was unsuccessful.

s/ Donna Brewer MacKenna
Donna Brewer MacKenna

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